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APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,243	07/23/2001	Thomas G. Mushaben	CLOP/465CP	4993
26875	7590	06/01/2004	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			LUK, EMMANUEL S	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/911,243	MUSHABEN, THOMAS G.
	<b>Examiner</b> Emmanuel S. Luk	<b>Art Unit</b> 1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 March 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kezuka et al (4614632) in view of Wenning et al (5792487).

Kezuka teaches the claimed apparatus having a first and second intersecting interdigital rollers (54a, 54b), a press roll [controller or disc] (53) for contacting the film to the first roller, Kezuka also teaches a set of interengaging rollers (51a, 51b).

Kezuka fails to claim a bar, presser, a plurality of controllers and progressive roll formers and lateral adjustable.

Wenning teaches the claimed apparatus of producing corrugated materials via intersecting interdigital rollers (18,28). The film is sent through a plurality of controllers

(14a, 14b, 14c) for contacting to the rollers. One of ordinary skill in the art would recognize that the controllers also act as progressive roll formers.

It would have been obvious to one of ordinary skill in the art to modify Kezuka with rollers as taught by Wenning because it allows for the creation of slack in the film and the formation of corrugation along the width of the film.

In regards to claim 19, the roller taught by Kezuka and Wenning is equivalent to a bar running across the width of the film. One of ordinary skill in the art would recognize that a roller and bar would function similarly, only a roll is not placed the support the roller. The roller is an improvement over to bar to prevent friction from developing as the film runs along towards the interdigital rollers for stretching.

In regards to claim 26, it would have been obvious to one of ordinary skill in the art to make the controller laterally adjustable. *In re Stevens*, 101 USPQ 284. It is merely a choice of design to shift in the controllers location in Kezuka laterally.

### ***Response to Arguments***

4. Applicant's arguments filed 3/11/2004 have been fully considered but they are not persuasive. The applicants have argued that the prior art do not serve to stretch film or web. However, the use of the rollers for stretching film or web is part of the preamble statement of the claim. Preamble language in a patent claim does not limit the claim. The preamble does not show "essential structure or steps" and is not necessary to give "life, meaning, and vitality" to the claim. *Intirtool, Ltd. v. Texar Corp.* 03-1394. The remainder of the claim is an application with structural limitations of a first

and second interdigital rollers. The discussion of use for film or web is an intended use of the apparatus. In regards to the controllers, applicants discuss that the controllers that presses the film. This is the same as the rollers that also press into the material to contact the interdigitating rollers, thus they are the controllers.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (703) 305-1558. The examiner can normally be reached on Monday through Friday 8 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on (703) 308-0457. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.

E.L.

  
W. L. WALKER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700